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FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

DOCKET FILE COPY ORIGINAL

OCT 22 1988

OFFICE OF
MANAGING DIRECTOR

Stephen G. Kraskin, Esquire
Sylvia Lesse, Esquire
Kraskin & Lesse
2120 L Street, N.W.
Suite 520
Washington, D.C. 20037

86-285

Re: Fee Control # 9705098140141003

Dear Mr. Kraskin and Ms. Lesse:

This will respond to your request for refund of an application fee filed on behalf of Cap Rock Telephone Cooperative ("Cap Rock") in connection with its petition for waiver of sections 36.611 and 36.612 of the Commission's rules, 47 C.F.R. §§ 36.611 and 36.612.

You represent that Cap Rock is a "small, rural local exchange carrier" that "provides telephone service to high-cost rural service areas." You further represent, and our records reflect, that Cap Rock recently had acquired and received an associated study area waiver for "four exchanges from GTE Southwest Incorporated." Given that recent acquisition and study area waiver grant, Cap Rock had sought waiver of sections 36.611 and 36.612 to enable it to receive retroactive high cost loop support based on current, as opposed to historical, costs in order "to expedite [its provision of] quality, reasonably-priced local telephone service to residents of rural Texas."

You assert that the imposition of a filing fee in this instance would increase the overall cost of service and impose an unnecessary financial burden which Cap Rock's subscribers would ultimately bear, contrary to the Commission's goals and policies. You therefore request a waiver of the filing fee requirement.

The Commission may waive filing fees only upon a showing of good cause and a finding that the public interest will be served thereby. See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 2 FCC Rcd 947, 961 (1987); see also 47 C.F.R. §1.1117. You have represented in general terms that the imposition of the \$5,665.00 filing fee for waiver of Part 36 would represent a significant expense for Cap Rock and ultimately Cap Rock's subscribers, and thus a financial hardship. The Commission recognizes that in certain instances the payment of required fees may impose financial hardship and has waived fees where "a compelling case of financial hardship" is shown. Cf. Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), reconsideration granted, 10 FCC Rcd 12759 (1995).

Stephen G. Kraakin, Esquire
Sylvia Lesse, Esquire
Page 2

In order to establish a compelling case of financial hardship, a more detailed showing is required. In this connection, you may submit information such as a balance sheet, a profit and loss statement (audited, if available), a cash flow projection (with an explanation of how it was calculated, and with and without the receipt of anticipated USF support), a list of officers and their individual compensation, together with a list of the highest paid employees and the amount of their compensation, or similar such information. At this juncture, however, you have not made a showing sufficient to warrant waiver of the fee payment.

Therefore, based on the present state of the record, we are denying Cap Rock's request for waiver without prejudice. Cap Rock's refund request will be reinstated upon a more persuasive, detailed showing of financial hardship. If you have questions concerning this matter, please contact the Chief, Fee Section, at (202) 418-1995.

Sincerely,



Mark Reger
Chief Financial Officer

9705098140141003

RECEIVED

KRASKIN & LESSE, LLP
ATTORNEYS AT LAW
TELECOMMUNICATIONS MANAGEMENT CONSULTANTS

MAY - 7 1997

Federal Communications Commission
Office of Secretary

2120 L Street, N.W., Suite 520
Washington, D.C. 20037

Telephone (202) 296-8890
Telecopier (202) 296-8893

May 7, 1997

Andrew S. Fishel, Managing Director
Office of Managing Director
Federal Communications Commission
Room 852
1919 M Street, N.W.
Washington, D.C. 20554

Attention: Mr. Thomas Holleran

**Re: Cap Rock Telephone Cooperative
Request for Refund of Filing Fee**

Dear Mr. Fishel:

Pursuant to Sections 1.3 and 1.1113(a)(5) of the Rules of the Federal Communications Commission, Cap Rock Telephone Cooperative ("Cap Rock") respectfully requests a refund of the \$ 5,665 filing fee associated with its filing of a Petition for Expedited Waiver of Section 36.611 of the Commission's Rules ("Petition").¹

Cap Rock submitted the required \$ 5,665 filing fee along with its Petition for Expedited Waiver in order to expedite action on its request.²

Cap Rock is a small, rural local exchange carrier which acquired four exchanges from GTE Southwest Incorporated in 1995. In its Petition, Cap Rock seeks waiver of the referenced rules so that it may receive Universal Service Fund ("USF") payments consistent with both its actual ongoing loop cost levels and the public interest policies which the Accounting and Audits Division ("AAD") previously identified in granting a study area waiver. Grant of its Petition will enable Cap Rock to expedite quality, reasonably-priced local telephone service to residents of rural Texas.

¹ See *In the Matter of Cap Rock Telephone Cooperative, Petition for Expedited Waiver of Section 36.611 of the Commission's Rules*, filed with the Chief, Common Carrier Bureau on May 7, 1997.

² See Attachment 1.

Andrew S. Fishel
May 7, 1997
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As demonstrated in its Petition, Cap Rock provides telephone service to high-cost rural service areas and is, therefore, eligible to receive USF. The Commission's Rules provide for the calculation of USF payments based on historical annual cost information; however, in this case, the use of historical data would produce an anomalous result because the data contains only a partial year of loop related expenses. The modification requested in the Petition will result in a more reasonable level of interstate cost allocation. This will allow Cap Rock to continue with planned upgrades to the acquired exchanges and will avoid inequitable cost allocation and recovery and potential penalization of the subscribers of Cap Rock.

Cap Rock's Petition seeks to avoid burdening ratepayers located in high cost areas with unreasonable and inequitable levels of allocated costs. The imposition of a filing fee in this instance would increase the overall cost of service provision and impose a counter-productive financial burden which the subscribers of Cap Rock ultimately bear, contrary to the Commission's goals and policies. Accordingly, Cap Rock respectfully requests that the filing fee for its May 7, 1997 Petition be refunded expeditiously.

Should you have any questions concerning this matter, please feel free to contact the undersigned.

Respectfully submitted,

CAP ROCK TELEPHONE COOPERATIVE

By: Stephen G. Kraskin
Stephen G. Kraskin

Its Counsel

Attachments

ATTACHMENT 1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Cap Rock Telephone Cooperative)
)
Petition for Waiver of Section 36.611)
of the Commission's Rules)

To: Chief, Common Carrier Bureau

PETITION FOR EXPEDITED WAIVER

Cap Rock Telephone Cooperative ("Cap Rock" or "Petitioner"), pursuant to Sections 0.91 and 1.3 of the Commission's Rules,¹ respectfully requests waiver of Section 36.611 of the Commission's Rules² related to the decision in DA 95-1501 and AAD 94-109 released by the Chief of the Accounting and Audits Division ("AAD") on July 10, 1995.³ Petitioner seeks changes in the terms of the initial waiver to allow Universal Service Fund ("USF") reporting and USF expense adjustment cost recovery that are consistent with both the facts and public interest policies upon which the AAD relied in the *Waiver Order*.⁴ Without modification of the terms of the initial waiver to accommodate the requests herein, the application of the Commission's rules

¹ 47 C.F.R. §§ 0.91, 1.3.

² 47 C.F.R. § 36.611.

³ *Memorandum Opinion and Order*, In the Matter of GTE Southwest Incorporated and Cap Rock Telephone Company, Inc., Joint Petition for Waiver of Section 61.41(c)(2) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, released July 10, 1995 in DA 95-1501 and AAD 94-109 ("*Waiver Order*"). Cap Rock Telephone Cooperative is the successor of Cap Rock Telephone Company, Inc.

⁴ Petitioner characterizes this request as a modification of the original *Waiver Order*. However, Petitioner is aware that staff members of the AAD have asked that a request of this type be filed as a waiver request. Accordingly, this Petition is being filed together with the regulatory fee of \$5,665. Petitioner is concurrently requesting that the Managing Director's office refund this fee on an expedited basis.

FEDERAL COMMUNICATIONS COMMISSION
FCC REMITTANCE ADVICE

Approved by OMB
3060-0589
Expires 2/28/97

PAGE NO. 1 OF 1

(RESERVED)

SPECIAL USE

FCC USE ONLY

(Read instructions carefully BEFORE proceeding.)

PAYOR INFORMATION

(1) FCC ACCOUNT NUMBER Did you have a number prior to this? Enter it. (2) TOTAL AMOUNT PAID (dollars and cents)
0 7 5 1 8 8 1 3 7 5 \$ 5,665.00

(3) PAYOR NAME (If paying by credit card, enter name exactly as it appears on your card)

Cap Rock Telephone Cooperative, Inc.

(4) STREET ADDRESS LINE NO. 1
P.O. Box 300

(5) STREET ADDRESS LINE NO. 2
121 East Third Street

(6) CITY (7) STATE (8) ZIP CODE
Spur TX 79370

(9) DAYTIME TELEPHONE NUMBER (Include area code) (10) COUNTRY CODE (if not U.S.A.)
806/271-3336

ITEM #1 INFORMATION

(11A) NAME OF APPLICANT, LICENSEE, REGULATEE, OR DEBTOR FCC USE ONLY
Same As Above

(12A) FCC CALL SIGN/OTHER ID (13A) ZIP CODE (14A) PAYMENT TYPE CODE (15A) QUANTITY (16A) FEE DUE FOR PAYMENT TYPE CODE IN BLOCK 14
 B E A 1 \$ 5,665.00

(17A) FCC CODE 1 (18A) FCC CODE 2

(19A) ADDRESS LINE NO. 1 (20A) ADDRESS LINE NO. 2 (21A) CITY/STATE OR COUNTRY CODE

ITEM #2 INFORMATION

(11B) NAME OF APPLICANT, LICENSEE, REGULATEE, OR DEBTOR FCC USE ONLY

(12B) FCC CALL SIGN/OTHER ID (13B) ZIP CODE (14B) PAYMENT TYPE CODE (15B) QUANTITY (16B) FEE DUE FOR PAYMENT TYPE CODE IN BLOCK 14
 \$

(17B) FCC CODE 1 (18B) FCC CODE 2

(19B) ADDRESS LINE NO. 1 (20B) ADDRESS LINE NO. 2 (21B) CITY/STATE OR COUNTRY CODE

CREDIT CARD PAYMENT INFORMATION

(22) MASTERCARD/VISA ACCOUNT NUMBER:
☐ Mastercard EXPIRATION DATE:
☐ Visa Month Year

(23) I hereby authorize the FCC to charge my VISA or Mastercard for the service(s)/authorization(s) herein describe.

AUTHORIZED SIGNATURE DATE

Payment Transactions Detail Report

Date: 6/6/97

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Account Number	Received Date
9705098140141003	CAP ROCK TELEPHONE COOPERATIVE	FCC2037206	05/07/97
	PO BOX 300		
	121 EAST THIRD STREET		
	SPUR TX 79370		

Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$5,665.00	\$5,665.00	1	BEA	1		CAP ROCK TELEPHONE COOPERATIVE			\$5,665.00	1	PMT
Total									\$5,665.00		